

United States Senate
Washington, DC 20510-1304

May 11, 2016

Brian Byrne
Director of Operations
EMVCo, LLC
901 Metro Center Boulevard
Foster City, CA 94404

Dear Mr. Byrne:

Thank you for your response to my March 17 letter seeking information about EMVCo's governance and operations. I write today to raise several additional concerns and questions in light of the information you provided.

As your letter noted, EMVCo was formed in 1999 by Visa and MasterCard to essentially serve as a standard-setting organization for EMV chip card technology which is now used on hundreds of millions of credit and debit cards in the United States and over 3.4 billion cards worldwide. Currently, EMVCo is governed by six global payment networks that each have a 1/6 ownership stake in EMVCo and that have exclusive control over all decisions relating to the establishment of EMV specifications and standards.ⁱ Your letter made clear that all other participants in the electronic payments system – consumers, financial institutions, merchants, processors, technology companies, and smaller payments networks – are limited to advisory roles within EMVCo and do not have a meaningful vote in any EMVCo decisions.

The lack of diverse stakeholder representation in EMVCo's governance structure raises serious concerns that EMVCo is not sufficiently focused on making chip card technology work as well as it should for the benefit of consumers and non-network stakeholders. According to the United States Standards Strategy, the first five principles that should govern standards development are the following:

- “Transparency: Essential information regarding standardization activities is accessible to all interested parties.”
- “Openness: Participation is open to all affected interests.”
- “Impartiality: No one interest dominates the process or is favored over another.”
- “Effectiveness and Relevance: Standards are relevant and effectively respond to regulatory and market needs, as well as scientific and technological developments.”
- “Consensus: Decisions are reached through consensus among those affected.”ⁱⁱⁱ

EMVCo appears to fall short in each of these areas: the process of establishing EMV specifications is opaque, stakeholder participation is limited, decision-making is dominated and exclusively controlled by only six companies, EMVCo standards have been technologically inadequate and their implementation has caused chaos in the U.S. market, and consensus has been lacking. These shortcomings are particularly troubling when we are dealing with a standard-setting entity in an area as fundamental to the U.S. economy as electronic payments.

Your letter says that “EMV was designed to reduce fraud at retail store locations.” However, retail and consumer representatives have no vote within EMVCo, and, unsurprisingly, the 2015 transition to EMV in the United States has been plagued by problems that have burdened retailers and consumers and hampered EMVCo’s goal of reducing fraud. For example, many merchants that have purchased EMV card reader technology have been unable to use it because of backlogs in the EMV software certification process. Also, many consumers have been discouraged from using EMV cards because of the long amount of time the transactions take at the retail counter. These were predictable problems, but it appears that these problems either were not recognized or were not viewed as a priority by EMVCo and its controlling networks. If retail and consumer representatives had a vote in EMVCo decisions and had their voices meaningfully represented, they might have pointed out and helped prevent problems such as these.

Similarly, the statistics you provided in your letter are evidence of the shortcomings in the standards-setting process. The fact that only 1.9% of U.S. card transactions in 2015 ended up using EMV chip technology indicates either that the market was not remotely prepared for the EMV transition or that there were problems with the technology (or both). Months have been wasted and enormous costs incurred as a result of EMV problems which EMVCo should have identified and addressed in advance.

I am also troubled by your letter’s refusal to take a position on chip-and-PIN technology. This refusal is inexplicable given the well-documented benefits of PIN authentication in reducing lost-and-stolen card fraud and given EMVCo’s statement in its 2015 “Issuer and Application Security Guidelines” that PIN use “remains an important tool for protecting against lost and stolen fraud.” I am concerned that EMVCo’s controlling networks, most of whom have fiercely advocated against PINs because of their financial stake in signature transactions, may be preventing EMVCo from stating a clear position on the benefits of PIN. If EMVCo had more diverse stakeholder voices represented in its ownership, I suspect you would have been authorized to respond with a reasonable and fact-based position on PIN’s benefits.

In short, it appears that EMVCo is currently run by the big card networks for the big card networks. It is time for other stakeholders besides giant card networks to have a meaningful vote in EMVCo’s decision-making and standard-setting process. I urge you to begin the process of incorporating other stakeholders into EMVCo’s governance structure to accomplish this goal.

I am attaching several follow-up questions arising out of your letter, and I ask that you provide a response to these questions within 30 days. I look forward to your responses and to ensuring that EMVCo’s specifications represent a true collaboration and consensus between all payments system stakeholders - large networks, small networks, financial institutions, merchants, processors, technology companies that may be developing new products to compete with established networks and, most of all, consumers. Thank you for your attention to this request.

Sincerely,



Richard J. Durbin
United States Senator

cc: Chairwoman Edith Ramirez, Federal Trade Commission
Principal Deputy Assistant Attorney General Renata B. Hesse, DOJ Antitrust Division

Additional Questions

1. Your response said that that EMVCo decisions “require the concurrence of at least a supermajority” of EMVCo’s six member networks.
 - a. Does EMVCo’s supermajority threshold require four votes, five votes or six votes among the six member networks for a decision to be approved?
 - b. Does EMVCo’s decision-making process mean that decisions can be made with a supermajority vote of member networks even if one or both of EMVCo’s founding networks, MasterCard or Visa, are on the losing side of that vote?
 - c. Does EMVCo’s decision-making process mean that decisions can be made by the member networks over the objections of EMVCo’s Business and Technical Associates, whose role is purely advisory in nature?
2. What safeguards are in place to ensure that EMVCo’s six member networks are not coordinating through EMVCo to establish standards or implement those standards in a way that diminishes competition? For example, did EMVCo have safeguards in place to ensure that there was no improper coordination among EMVCo’s member networks regarding the ways in which a transition to EMV might be incentivized or the timing of any such incentives?
3. You say in your letter that EMVCo is crafting specifications “to include next generation technologies supporting solutions such as mobile payments and online authentication” and that “EMVCo is currently considering a draft specification related to the use of biometric authentication for acceptance devices.” The stakes are certainly high when it comes to making sure that mobile, online and biometric payments technology will work well for consumers and for other stakeholders. Will EMVCo commit to include more diverse stakeholder voting representation before putting forth technology standards for mobile payments, online authentication and biometrics?

ⁱ While EMVCo does not itself mandate the use of its specifications, EMVCo’s six network owners each have adopted those specifications within their networks and in doing so have effectively created an industry standard for the electronic payments system.

ⁱⁱ United States Standards Strategy, p. 6, available at <http://trade.gov/td/standards/United%20States/US%20Standards%20Strategy-%20English.pdf>.